

803 KAR 2:060. Employers' responsibilities.

RELATES TO: KRS 338.051, 29 C.F.R. Part 1903

STATUTORY AUTHORITY: KRS 338.051

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to the authority granted the Kentucky Occupational Safety and Health Standards Board by KRS 338.051 to adopt administrative regulations required by federal law, this administrative regulation identifies the responsibility place upon the employer to post notices furnished by the Occupational Safety and Health Program, Department of Workplace Standards, verify abatement of cited hazards to the department, and also to furnish certain information to employees for their safety and protection. Necessary for effective enforcement of the purposes and policies of the Occupational Safety and Health Act which is to insure so far as is possible, safe and healthful working conditions of Kentucky workers (KRS 338.011).

Section 1. Definitions. (1) "Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by Division of Occupational Safety and Health Compliance during an inspection.

(2) "Abatement date" means:

(a) For an uncontested citation item, the later of:

1. The date in the citation for abatement of the violation;
2. The date approved by Division of Occupational Safety and Health Compliance or established in litigation as a result of a petition for modification of the abatement date (PMA); or
3. The date established in a citation by an informal settlement agreement.

(b) For a contested citation item for which the Kentucky Occupational Safety and Health Review Commission (KOSHRC) has issued a final order affirming the violation, the later of:

1. The date identified in the final order for abatement; or
2. The date computed by adding the period allowed in the citation for abatement to the final order date;
3. The date established by a formal settlement agreement.

(3) "Affected employees" means those employees who are exposed to the hazard(s) identified as violation(s) in a citation.

(4) "Final order date" means:

(a) For an uncontested citation item, the 15th working day after the employer's receipt of the citation;

(b) For a contested citation item:

1. The 30th day after the date on which a decision or order of a commission hearing officer has been docketed with the commission, unless a member of the commission has directed review; or
2. Where review has been directed, the 30th day after the date on which the commission issues its decision or order disposing of all or pertinent part of a case; or
3. The date on which an appeals court issues a decision affirming the violation in a case in which a final order of KOSHRC has been stayed.

(5) "Movable equipment" means a hand-held or nonhand-held machine or device, powered or unpowered, that is used to do work and is moved within or between worksites.

(6) "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed, (for example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in

each such establishment, to the extent that such notices have been furnished by the Division of Occupational Safety and Health Compliance. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of Section 2 of this administrative regulation.

Section 2. Purpose and Scope. (1) KRS Chapter 338 requires, in part, that every employer shall furnish to his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. Covered employers shall comply with the occupational safety and health standards promulgated pursuant to KRS Chapter 338. Employees shall comply with standards, rules, administrative regulations and orders issued under KRS Chapter 338 which are applicable to their own actions and conduct.

(2) The Division of Occupational Safety and Health Compliance is authorized to conduct inspections and issue citations and proposed penalties for alleged violations.

Section 3. Posting of Notice, Availability of Act, Administrative Regulations, and Applicable Standards. (1) Each employer shall post and keep posted a notice or notices to be furnished by the Division of Occupational Safety and Health Compliance, Labor Cabinet, informing employees of the protections and obligations provided for in KRS Chapter 338, and that for assistance and information, including health standards, employees should contact the employer or the Division of Occupational Safety and Health Compliance. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other material that obscures the poster.

(2) Copies of KRS Chapter 338, all administrative regulations filed pursuant thereto, and all applicable standards will be available at the Department of Workplace Standards, Labor Cabinet. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or his authorized representative and the employer.

(3) Any employer failing to comply with the provisions of this section shall be subject to citation and penalty in accordance with the provisions of KRS 338.991.

Section 4. Abatement Verification. (1) Purpose. Inspections by the Division of Occupational Safety and Health Compliance are intended to result in the abatement of violations of KRS Chapter 338. This section sets forth the procedures the Division of Occupational Safety and Health Compliance will use to ensure abatement. These procedures are tailored to the nature of the violation and the employer's abatement actions.

(2) Scope and application. This section applies to employers who receive a citation for a violation of KRS Chapter 338.

(3) Abatement certification.

(a) Within ten (10) calendar days after the abatement date, the employer must certify to the Division of Occupational Safety and Health Compliance (the agency) that each cited violation has been abated, except as provided in paragraph (b) of this subsection.

(b) The employer is not required to certify abatement if the compliance officer, during the on-site portion of the inspection:

1. Observes, within twenty-four (24) hours after a violation is identified, that abatement has occurred; and
2. Notes in the citation that abatement has occurred.

(c) The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required by subsection (8) of this section, the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement. Note to this subsection: Appendix A (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement certification letter.

(4) Abatement documentation.

(a) The employer must submit to the agency, along with the information on abatement certification required by subsection (3)(c) of this section, documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the agency indicates in the citation that such abatement documentation is required.

(b) Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

(5) Abatement plans.

(a) The agency may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than ninety (90) calendar days. If an abatement plan is required, the citation must so indicate.

(b) The employer must submit an abatement plan for each cited violation within twenty-five (25) calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete. Note to this subsection: Appendix B (incorporated by reference in Section 5 of this administrative regulation) contains a sample abatement plan form.

(6) Progress reports.

(a) An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

1. That periodic progress reports are required and the citation items for which they are required;
2. The date on which an initial progress report must be submitted, which may be no sooner than thirty (30) calendar days after submission of an abatement plan;
3. Whether additional progress reports are required; and
4. The date(s) on which additional progress reports must be submitted.

(b) For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. Note to this subsection: Appendix B (incorporated reference by Section 5 of this administrative regulation) contains a sample progress report form.

(7) Employee notification.

(a) The employer must inform affected employees and their representative(s) about abatement activities covered by this section by posting a copy of each document submitted to the agency or a summary of the document near the place where the violation occurred.

(b) Where such posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer must:

1. Post each document or a summary of the document in a location where it will be readily ob-

servable by affected employees and their representatives; or

2. Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(c) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the agency.

1. An employee or an employee representative must submit a request to examine and copy abatement documents within three (3) working days of receiving notice that the documents have been submitted.

2. The employer must comply with an employee's or employee representative's request to examine and copy abatement documents within five (5) working days of receiving the request.

(d) The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the agency and that abatement documents are:

1. Not altered, defaced, or covered by other material; and

2. Remain posted for three (3) working days after submission to the agency.

(8) Transmitting abatement documents.

(a) The employer must include, in each submission required by this section, the following information:

1. The employer's name and address;

2. The inspection number to which the submission relates;

3. The citation and item numbers to which the submission relates;

4. A statement that the information submitted is accurate; and

5. The signature of the employer or the employer's authorized representative.

(b) The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the agency receives the document is the date of submission.

(9) Movable equipment.

(a) For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the worksite or between worksites. Note to this paragraph: Attaching a copy of the citation to the equipment is deemed by Division of Occupational Safety and Health Compliance to meet the tagging requirement of paragraph (a) of this subsection as well as the posting requirement of 803 KAR 2:125.

(b) The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. Note to this paragraph: Nonmandatory Appendix C in the material incorporated by reference in Section 5 of this administrative regulation contains a sample tag that employers may use to meet this requirement.

(c) If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

1. For hand-held equipment, immediately after the employer receives the citation; or

2. For nonhand-held equipment, prior to moving the equipment within or between worksites.

(d) For the construction industry, a tag that is designed and used in accordance with 29 C.F.R. 1926.20(b)(3) (incorporated by 803 KAR 2:402) and 29 C.F.R. 1926.200(h) (incorporated by 803 KAR 2:406) is deemed to meet the requirements of this section when the information required by paragraph (b) of this subsection is included on the tag.

(e) The employer must assure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

(f) The employer must assure that the tag or copy of the citation attached to movable equipment remains attached until:

1. The violation has been abated and all abatement verification documents required by this administrative regulation have been submitted to the agency;
2. The cited equipment has been permanently removed from service or is no longer within the employer's control; or
3. The commission issues a final order vacating the citation.

Section 5. Incorporation by Reference. (1) The appendices to 29 C.F.R. 1903.19, as published in the Federal Register, Volume 62, pages 15324-15340, March 31, 1997 are incorporated by reference.

(2) This material may be inspected, obtained, and copied at the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. (OSH 103; 1 Ky.R. 158; eff. 12-11-74; Am. 3 Ky.R. 249; eff. 10-6-76; 24 Ky.R. 1145; 1510; eff. 1-12-98; TAm eff. 8-9-2007; TAm eff. 9-8-2011; TAm eff. 7-17-2014.)